

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1488 of 1984
With
CROSS OBJECTION No. 129 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
HIRABHAI SHAMALBHAI VANKAR & 2 - Defendant(s)

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Appearance :

MR MD PANDYA for Appellant(s) : 1,
MR AJ PATEL for Defendant(s) : 1,
None for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/08/2006

ORAL JUDGMENT

1. Mr Shital Patel, learned advocate appearing for Mr A.J Patel for the original claimant seeks permission to withdraw the Cross-objection before effective hearing. Permission as prayed for is granted. Cross-objection No. 129 of 2006 stands disposed of as withdrawn.

2. By way of First Appeal No. 1488 of 1984, the

appellant has challenged the judgement and award dated 19.11.83 passed by the Motor Accident Claims Tribunal, Sabarkantha at Himmatnagar in MACP No. 268 of 1981 whereby the Tribunal has awarded a sum of Rs. 71,640/- by way of compensation payable to the original claimant by the original opponents nos. 1, 2 & 3.

2. The original claimants filed claim petition claiming compensation to the tune of Rs. 94,000/- in respect of the vehicular accident which occurred on 10.02.81 on Badoli-Idar road near village Godhamji while the original claimant who was travelling in S.T Bus bearing no. GRS 8320 was thrown out of the exit door. The original claimant sustained injuries on various parts of his body including loss of vision in the right eye. The claim petition came to be filed under the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Ms Desai, learned counsel appearing for Mr Pandya for the appellant has contended that the Tribunal ought to have seen that the claimant was standing near the exit door and he opened it without informing the conductor in order to get down near Teen rasta from the moving bus but as the claimant lost control he fell down on the ground

and sustained injuries and therefore the S.T driver or conductor cannot be held liable for the negligence of the claimant.

3.1 She has further contended that the Tribunal has erred in discarding the statement of the conductor Valibhai on the ground that the statement before the police is entirely counter to his deposition before the Tribunal which is not just and proper. She has contended that the Tribunal ought to have considered that as per the version of the conductor, he had already locked the exit door and thereby taken due care and therefore the Tribunal ought to have considered the contributory negligence equally or at the most 30% and 70% in respect of the claimant and the conductor.

3.2 Ms Desai has further contended that the Tribunal has erred in awarding Rs. 35,000/- under the head of pain, shock and suffering due to loss of vision in one eye when the same ought to have been not more than Rs. 10,000/-. She has further contended that the Tribunal has erred in holding that the claimant had loss of earning capacity at the rate of 40% and assessing and awarding loss of income on that basis which is not in accordance with law.

3.3 Ms Desai has contended that the Tribunal has erred in assessing the monthly income of the claimant at Rs. 400/- though there is no reliable evidence produced by the claimant to substantiate his claim. She has further submitted that even if Rs. 400/- is taken as the monthly income, the award ought not to be more than Rs. 25000/- in view of the decision of the Apex Court in the case of ***"U.P. State Road Transport Corporation and Ors. Vs. Trilok Chandra & Ors."*** reported in 1996(3)GLR 136.

4. Mr Shital Patel, learned counsel appearing for Mr A.J Patel for the respondent has submitted that the Tribunal has gone through the evidence in detail and has passed the award in accordance with law which therefore does not call for any interference by this Court.

5. Heard learned counsel for the parties. I have gone through the award of the Tribunal and the evidence placed on record. The first contention of the appellant is regarding contributory negligence. As a result of perusal of records, it cannot be totally ruled out that the claimant has no role in his fall. The Tribunal has drawn an adverse inference against the driver in view of his non-appearance. I am of the view that even if the driver would have deposed the same would not have been of

any help as he would not have been a witness to the entire episode which happened at the rear exit door. Therefore, though it is the duty of the conductor and the driver to ensure the safety of the passengers, the passenger is equally responsible to safe guard himself. In that view of the matter, I am of the opinion that interest of justice will be served by assigning the contributory negligence in the ratio of 25% and 75% between the original claimant and the S.T Corporation.

5.1 As regards the contention of pain, shock and suffering is concerned, in my opinion looking to the days of hospitalisation, the percentage of disability and the decision of this court, Rs. 35000/- is on the higher side. Moreover, considering all these aspects and also in view of the decision of this court in the case of **Babu Mansa v. Ahmedabad Municipal Corporation and Ors reported in 1978(19) GLR 492**, an amount of Rs. 15,000/- as compensation towards pain, shock and suffering will be just and proper.

5.2 As far as the future economic loss is concerned, as per the case of **"U.P. State Road Transport Corporation (supra)** the future loss is to be calculated on the basis of average of double the income which comes to Rs. 600/-

in the present case after taking the monthly loss at Rs. 400/-. The Tribunal has calculated the loss of income on the basis of earning capacity as against the disability. In the present case, in view of the loss of vision of one eye the disability of the claimant as per the Workmen's Compensation Act, cannot be more than 15%. In that view of the matter, the per month loss shall come to Rs. 90/- which in turn is Rs. 1,080/- per annum.

5.3 The Tribunal has in the present case applied the multiplier of 15 years which in my opinion is just and proper. Hence, the future loss of income shall come to Rs. 16,200/- (Rs. 1,080/- x 15). Therefore, since the Tribunal has already awarded Rs. 28,800/-, the balance amount of Rs. 12,600/- shall be refunded to the original opponents. The original claimant shall therefore be entitled to Rs. 12,600/- towards future loss of income, Rs. 15,000/- towards pain, shock and suffering, Rs. 2000/- under the head of actual loss of income and Rs. 5840/- towards medicine, medical treatment, transportation, special diet etc. thereby coming to a total amount of Rs. 39,040/- by way of compensation. However, in view of the 25% negligence attributed on the part of the original claimant he shall be finally entitled to an amount of Rs. 29,280/-.

6. In the premises aforesaid, the appeal is allowed accordingly. The original claimant shall be entitled to a total compensation of Rs. 29,280/- with running interest at the rate of 6% per annum from the date of application till realisation. The award of the Tribunal is modified accordingly. No order as to costs.

(K.S. JHAVERI, J.)

Divya//